BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.06.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)Nos.902 of 2021 and 323 of 2023
and
C.M.P(MD)No.8481 of 2021

C.M.A(MD)No.902 of 2021

M/s.Royal sundaram Allianz Insurance Company Limited,
Visanthi, Mechloram Towers,
No.2/319, Rajiv Gandhi Salai,
(OMR) Karapakkam,
Chennai. :Appellant/Second respondent

.vs.

1.Manoj Kumar : Ist Respondent/Petitioner

2.Ayyappan :2nd Respondent/Ist Respondent

C.M.A(MD)No.323 of 2023

M.Manoj Kumar :Appellant/Petitioner

.vs.

1.Ayyappan

2.Royal Sundaram alliance Insurance Company Limited,
Visanthi Mekleram Towers,
No.2/319, Rajiv Gandhi Salai(OMR),
Karapakkam,
Chennai – 600 002. :Respondents/Respondents

PRAYER in C.M.A(MD)No.902 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the fair and decretal order made in M.C.O.P.No.61 of 2015, dated 5.2.2021, on the file of the Motor Accidents Claims Tribunal/Sub-Court, Kulithalai.

PRAYER in C.M.A(MD)No.323 of 2023: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree made in M.C.O.P.No.61 of 2015, dated 5.2.2021, on the file of the Motor Accidents Claims Tribunal(Sub Court), Kulithalai, Karur and seeking liability and enhancement of compensation of Rs.5,00,000/-.

C.M.A(MD)No.902 of 2021

For Appellant :Mr.S.Srinivasa Raghavan

For Respondent-1 :Mr.N.Sudhagar Nagaraj

For Respondent-2 :Left without instruction

C.M.A(MD)No.323of 2023

For Appellant :Mr.N.Sudhagar Nagaraj

For Respondent-2 :Mr.S.Srinivasa Raghavan

COMMON JUDGMENT

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The Insurance Company has filed the above appeal in C.M.A(MD)NO.902 of 2021, challenging the percentage of contributory negligence fixed on the rider of the motor-cycle, whereas, the claimant has filed the appeal in C.M.A(MD)No.323 of 2023, seeking for enhancement of compensation.

2.The parties are referred to as per their ranking before the Tribunal.

3.The brief facts leading to the filing of the appeals are as follows:

The injured claimant was riding his motor-cycle on 23.10.2014 at 7.30 p.m., at Trichy Dindigul Main Road. At that time, an omni car bearing Registration No. TN 10B8627 belonging to the first respondent, came in the opposite direction, driven by its driver in a rash and negligent manner and dashed against the motor cycle and as such, the claimant sustained multiple injuries and fracture on the ribs and injuries on the other parts of the body. He was admitted in Atlas Hospital, Trichy from 23.10.2014 to 14.11.2014 for treatment and thereafter, he was shifted to some other hospital and has spent considerable amount for treatment. Hence he has claimed Rs.15 lakhs as compensation for the injuries sustained by him.

4.It is the case of the Insurance company that the driver of the motor cycle did not possess valid driving licence at the time of accident and he was negligent in driving his vehicle and thus caused the accident.

5.Before the Tribunal, on the side of the Petitioner, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P5 were marked. On the side of the second respondent R.W.1 was examined and Ex.R1 was marked. Further, Ex.X1 to Ex.X4 were marked and Ex.C1 was also marked.

6.On appreciation of evidence both oral and documentary, the Tribunal fixed the contributory at 80% in favour of the second respondent Insurance Company and 20% towards the Petitioner claimant and accordingly, awarded a compensation of Rs. 4,56,000/- and directed the Insurance company to pay a sum of Rs. 3,645,800/- towards 80% of the award amount of Rs.4,56,000/-. Challenging the same, the Insurance Company has filed appeal in C.M.A(MD)No.902 of 2021 challenging the percentage of contributory nelgience fixed on the claimant/motor cyclist and seeking enhancement of compensation, the Petitioner/claimant has filed C.M.A(MD)No.323 of 2023.

7.It is the contention of the learned counsel for the claimant before the Tribunal that a sum of Rs.75,000/- was awarded towards the grievous injuries sustained by the Petitioner ie, multiple injuries, fracture on the ribs and injuries on other parts of the body. The Tribunal ought to have granted more compensation to the claimant for the injuries sustained by him.

8.The learned counsel for the Insurance Company would submit that the Tribunal has fixed contributory negligence at 80% towards the Insurance Company and only 20% towards the claimant, despite the fact that he did not possess valid driving licence at the time of accident and that the accident had taken place on the middle of the road. Therefore the percentage of negligence ought to have been more than that of 20% on the side of the Petitioner claimant.

9.In the light of the above facts, the points that arose for consideration in these appeals are as follows:

1.Whether the compensation awarded by the Tribunal is just and reasonable and whether it requires to be enhanced?

2.Whether the percentage of contributory negligence fixed on the motor cyclist/claimant is to be enhanced?

10.Admittedly, the accident took place on the middle of the road, is not disputed. Even P.W.1 claimant admitted in his evidence deposted that the accident took place in the manner as stated by the respondent, besides that the claimant did not possess valid driving licence at the time of accident. This fact is also admitted by both the sides. However the evidence adduced on record would clearly show that the driver of the offending car drove the car in a rash and negligent manner, which resulted in the accident.

11.The Tribunal, fixed the contributory negligence based on the admission made by P.W.1, at the rate of 80% on the Insurance Company and at 20% on the Petitioner /claimant. It is relevant to note that no other evidence whatsoever was produced by the Insurance Company to show that the negligence on the part of the claimant is more than that of 20%. In fact, the Tribunal itself has fixed the contributory negligence taking note of the fact of non possession of valid driving licence by the claimant at the time of accident and that the accident had taken place in the middle of the road.

12.In such view of the matter, this Court, in the absence of any concrete proof to fix more negligence on the part of the claimant/motor cyclist, this Court is unable to accept the contention of the learned counsel for the Insurance Company.Accordingly, I do not find any merit in the appeal filed by the Insurance Company.

13.As far as the quantum of compensation awarded by the Tribunal is considered, the Tribunal has infact granted a sum of Rs.75,000/- towards the grevious injuries taking note of the medical opinion given by the Medical Board, which would indicate that the claimant does not have any permanent disability. Therefore considering the nature of injuries and fracture sustained by the claimant, which has also been set right, the Tribunal awarded Rs. 75,000/- and that apart, the Tribunal has awarded Rs.2,54,054/- for the medical expenses and in total, awarded a total compensation of Rs.4,56,000/-.Considering the opinion of the medical board which would clearly show that the claimant do not have any permanent disability, the award of Rs.75,000/- towards the grievous injuries apart from the award of medical expenses, cannot be found fault with. In fact, the same has been granted by the tribunal, taking note of the fact that it is a beneficial legislation. Hence this Court does not find any merit in the appeal filed by the claimant for enhancement of compensation and the same deserves to be dismissed.

14.Accordingly, both the Civil Miscellaneous Appeals are dismissed,confirming the award of the Tribunal. The appellant/second respondent/Insurance Company is directed to deposit a sum of Rs.3,64,800/- towards 80% of contributory negligence fixed on them, together with interest at the rate of 7.5% pa from the date of claim petition till the date of realization and with costs, as ordered by the Tribunal, less the award amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Petitioner/claimant is permitted to withdraw the above said deposited award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

15.06.2023

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

1.The Motor Accidents Claims Tribunal,
(Sub-Court),
Kulithalai.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

N.SATHISH KUMAR.,J.

vsn

COMMON JUDGMENT MADE IN

C.M.A(MD)Nos.902 of 2021
and 323 of 2023
and
C.M.P(MD)No.8481 of 2021

15.06.2023